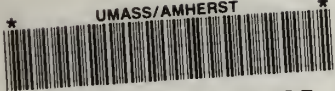


MASS. SAI-2: In 1

UMASS/AMHERST



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE STATE AUDITOR
DIVISION OF LOCAL MANDATES
DETERMINATION
MAY, 1990

312066 0278 0970 1

IN RE CITY OF WORCESTER AND CERTAIN LAWS AND REGULATIONS RELATIVE TO PUBLIC
EDUCATION: COST IMPOSED = \$985,025.00

I. INTRODUCTION

A. The Division of Local Mandates

The Division of Local Mandates (DLM) was established within the Office of the State Auditor by the citizens' initiative known as Proposition 2 1/2. St. 1980, c. 580, ss. 3 and 4. The purpose of DLM is to make determinations of the municipal financial impact of certain existing or proposed state laws and regulations pursuant to G.L. c. 29, s. 27C, the local mandate law. Also created by Proposition 2 1/2, the local mandate law provides that any municipality aggrieved by a post-1980 law or regulation imposing local costs may petition superior court to be exempted from compliance with such state law or regulation when the commonwealth fails to assume the cost. G.L. c. 29, s. 27C, added by St. 1980, c. 580, s. 2, amended by St. 1981, c. 782, ss. 4 - 7. Further, the local mandate law allows any city or town (and other parties) to request by written notice that DLM determine whether the cost of laws or regulations subject to G.L. c. 29, s. 27C have been paid by the commonwealth. If they have not, DLM must certify the deficiency in state payments due. Such determinations by DLM are prima facie evidence of the amount necessary to sustain the mandate. G.L. c. 29, s. 27C(e).

B. Methodology

By proper written notice, the City of Worcester initiated this determination. The local mandate law explicitly directs DLM to determine costs incurred as a result of laws or regulations subject to its provisions. G.L. c. 29, s. 27C(d). Accordingly, DLM first tests municipal allegations against the elements of a mandate finding defined by the local mandate law. These are:

- 1) The law or regulation must take effect on or after January 1, 1981; and
- 2) The law must impose a direct service or cost obligation upon the municipality. In the case of a regulation, it must be one which results in the imposition of additional costs.

Generally, the terms of the local mandate law require state funding for laws and regulations which meet both elements of the above test. The explicit statutory exceptions are for:

902/270



Digitized by the Internet Archive
in 2014

<https://archive.org/details/determinationmay00mass>

- 1) Municipal costs resulting from a court decision;
- 2) Municipal costs resulting from laws or regulations adopted as a direct result of a court decision;
- 3) Costs stemming from laws or regulations accepted by city council or town meeting.

By interpretation, DLM also finds exceptions to the mandate funding rule for:

- 1) Federal laws and regulations;
- 2) State laws and regulations adopted to achieve compliance with federal requirements;
- 3) State laws regulating municipal employment in accordance with the Massachusetts Constitution, Article 115.

Once a determination is made that a law or regulation is subject to G.L. c. 29, s. 27C, DLM works with appropriate municipal officials to determine compliance costs. DLM applies a "reasonableness test" to claimed expenditures: What actions/expenditures would a reasonable, prudent municipal official undertake to comply with the law or regulation? Claims for actions/expenditures not reasonably related to compliance are disallowed.

DLM then consults relevant state appropriation acts and officials to determine whether the state has provided funds to assume the full cost. In accordance with court authority, DLM seeks a specific appropriation or allocation within an item of appropriation for each mandated cost. "Requiring the specific allocation of funds for each mandated service best effectuates the fiscal protection of local government Proposition 2 1/2 was designed to achieve." Town of Lexington v. Commissioner of Education, 393 Mass. 693, 701 (1985).

II. COST DETERMINATIONS FOR CITY OF WORCESTER

DLM finds that the following laws and regulations are subject to the provisions of G.L. c. 29, s. 27C and certifies the deficiency in payments due from the commonwealth for each item:

- A. G.L. c. 15, s. 50 and Massachusetts Department of Education (DOE) regulation 603 CMR 30.00 relative to the Massachusetts Testing Program:
fiscal years 1987 - 1990 deficiency in payments = \$ 267,624.00.
- B. DOE regulation 603 CMR 28.103 relative to eligibility of preschool children for special education services under G.L. c. 71B:
fiscal years 1988 - 1990 deficiency in payments = \$ 92,030.00.
- C. DOE regulation 603 CMR 28.315.1 relative to school principal's duty to notify parents of their right to refer certain "at risk" children for a special needs evaluation:
fiscal years 1987 - 1990 deficiency in payments = \$ 114,105.00.

- D. DOE regulation 603 CMR 28.319.3(a) relative to requirement that school nurse review the physician's health assessment component of special needs evaluations:
fiscal years 1987 - 1990 deficiency in payments = \$24,692.00.
- E. Massachusetts Board of Regents of Higher Education college admissions standards requiring students to complete two years of a foreign language:
fiscal years 1986 - 1990 deficiency in payments = \$486,574.00.
- TOTAL DEFICIENCY, ALL ITEMS = \$985,025.00

III. EXPLANATION OF EACH DETERMINATION

- A. G.L. C. 15, S. 50 AND DEPARTMENT OF EDUCATION (DOE) REGULATION 603 CMR 30.00 RELATIVE TO THE MASSACHUSETTS TESTING PROGRAM: COST IMPOSED = \$267,624.00.

1. Applicability of G.L. c. 29, s. 27C.

The state funding provisions of G.L. c. 29, s. 27C(a) apply to "[a]ny law taking effect on or after January [1,1981] imposing any direct service or cost obligation upon any city or town" The Massachusetts Testing Program was created by St. 1985, c. 188 to improve curriculum and instruction and to identify those students needing assistance in mastering basic skills. Clearly, G.L. c. 15, s. 50 is a "...law taking effect on or after January [1,1981]"

Additionally, G.L. c. 29, s. 27C(c) applies to "[a]ny administrative rule or regulation taking effect on or after January [1,1981] which shall result in the imposition of additional cost upon any city or town" 603 CMR 30.00 was promulgated on December 31, 1986 to implement G.L. c. 15, s. 50. Thus, it is a "...regulation taking effect on or after January [1,1981]"

G.L. c. 15, s. 50 generally sets forth the duties of the Board of Education in establishing and implementing a statewide testing program for public school students. It further directs that

[e]ach school district shall administer all tests required
... in accordance with the instructions of the board, and
shall be reimbursed for reasonable costs incurred thereby
in accordance with section sixty of this chapter.

The referenced section 60 directs the Secretary of Administration and Finance to convene a committee to establish reimbursement guidelines, and file them with the House and Senate Committees on Ways and Means. DLM inquiries at the office of the Secretary of Administration and Finance and the Department of Education found no evidence that such a committee had been convened. Further, no state appropriation has been made to assume the municipal costs of complying with G.L. c. 15, s. 50 duties. These obligations are established more specifically by DOE regulations.

603 CMR 30.00 imposes numerous direct service and cost obligations upon school districts. In summary, these include:

- o actions to inform the public, parents, students and school personnel about the testing program;
- o personnel training for test administration;
- o planning and test security assurances;
- o testing students and providing make-up testing sessions for absentees;
- o actions to inform the public, parents and students about test results.

The impact of these requirements upon the City of Worcester is described more specifically below.

There is no evidence to indicate that the Massachusetts Testing Program was established as a result of a court decision or federal requirements. Further, the program is not subject to local acceptance. Accordingly, DLM concludes that G.L. c. 15, s. 50 and 603 CMR 30.00 are subject to the local mandate law, G.L. c. 29, s. 27C.

DLM certifies that the commonwealth has not provided for the assumption of the resulting cost to the City of Worcester by general law and by appropriation.

2. Cost Imposed Upon City of Worcester.

In the City of Worcester, 21,081 pupils attend public schools. There are 49 elementary, middle and high schools. The following costs are necessary for one year of administration of the Massachusetts Testing Program pursuant to the requirements of 603 CMR 30.00 in application of G.L. c. 15, s. 50.

- (a) Testing in grades 3, 6, and 9 involved
198 teachers at 4 hrs. per teacher and at
an hourly rate of \$30.00* \$ 23,760.00
- (b) Administration of the make-up test
involved 306 hours of teacher time at
\$30.00 per hour 9,180.00
- (c) Preparation and follow-up time including
review of testing materials and collation
of materials after testing for the entire
Worcester school system. 12,000.00
- (d) Preparation of report of system-wide
results 1,155.00
- (e) Printing and dissemination of testing report. 175.00

*average salary of \$30,000.00 ÷ 180 days ÷ 5.5 hours

(f)	Preparation and printing of testing memos	395.00
(g)	Preparation, translation, printing, paper and mailing letters to 250 bilingual and special needs pupils	441.00
(h)	Interpretation of test results to students and parents. Time of teachers and counselors includes 10 hours per each elementary school and 40 hours per each secondary school.	17,100.00
SUB TOTAL		\$ 64,206.00
4 years of testing x \$64,206.00		
SUB TOTAL		\$256,824.00
(i)	Substitute teachers while regular staff in training: 8 workshops x 27 substitutes x \$50/day for a one time cost.	10,800.00
CUMULATIVE TOTAL		\$267,624.00

Affidavits to these costs are on file in the DLM office from the Director of Guidance for the Worcester Public Schools.

B. MASSACHUSETTS DEPARTMENT OF EDUCATION (DOE) REGULATION 603 CMR 28.103, EFFECTIVE SEPTEMBER 1, 1986, RELATIVE TO ELIGIBILITY OF THREE AND FOUR YEAR OLD CHILDREN FOR SPECIAL EDUCATION SERVICES UNDER G.L. C. 71B AND ACCOMPANYING REGULATIONS: COST IMPOSED = \$92,030.00

1. Applicability of G.L. c. 29, s. 27C.

Prior to the 1986 amendment to said regulation, it provided a general definition of "child in need of special education." Regarding preschool aged children, it stated "Children of ages three and four shall qualify as children in need of special education if they have a substantial disability in one or more of the areas listed"

The 1986 amendment added to 603 CMR 28.103 the following:

"Substantial disability for children three and four years of age is defined as any condition which would interfere with that child's educational growth and development and deter that child's ability to progress effectively in a regular elementary school classroom when he/she attains school age." (Emphasis added.)

In the September, 1986 "Guide to Chapter 766 Regulation Changes" DOE explained the amendment at p. 1.

It eliminates a dual standard for eligibility: According to state statute, children ages three and four are eligible for services if they have a "substantial disability." Yet, no reference to level of disability is made with regard to older children receiving services. ... School departments, when determining eligibility for special education services, are now required to use the same standard for preschool students that they use for school-age students.

The plain meaning of the amendment and explanation indicates that elimination of the "dual standard" of eligibility requires the Worcester School Department to serve three and four year olds which they needed not serve under the prior regulation. When questioned about this change, DOE suggested that the amendment is not a new mandate within the meaning of G.L. c. 29, s. 27C for three reasons. These are described and analyzed below.

- a) DOE explains that the amendment simply codifies pre-1981 statutory interpretation and practice, and therefore does not create a new service obligation. Examination of the evidence offered to support this statement reveals that DOE did define "substantial disability" in relation to a prediction that a preschooler would not be able to progress effectively in a regular school program at school age. (1980 Program Advisory to Special Education Administrators from Associate Commissioner Roger Brown, at p. 2.) This communication further states that providing services to such pupils "... is programmatically sound and fiscally desirable ... at the earliest possible date." Id.

This terminology differs from the 1986 amendment in its lack of a clear requirement. Where the 1980 advisory suggests that it is prudent to serve such preschoolers, the 1986 regulation unequivocally requires service for a broader spectrum of individuals. DLM does not agree that making mandatory a service which was previously only suggested or encouraged is simply codifying prior interpretation.

- b) DOE explains that in any event, federal law requires a consistent definition of special education eligibility regardless of age and that this federal requirement removes the 1986 state amendment from the scope of the local mandate law. DLM analyzed relevant federal law and regulation and concludes that they do not necessarily require a consistent definition across ages. Rather, the federal regulations set minimum eligibility requirements defining which individuals aged three through twenty-one must be provided a free and appropriate education. The federal Education of the Handicapped Act regulations define handicapped children as follows:

... those children evaluated ... as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped or as having specific learning disabilities, who because of those impairments need special education and related services. 34 CFR 300.5(a). (Each delineated condition is specifically defined.)

Nothing in this text suggests that states may not adopt different criteria for preschoolers and the traditional school age population - as long as state standards meet federal minimums for all persons aged three through twenty-one. To the contrary, different standards and procedures for three and four year olds may be necessary to the extent they are not yet enrolled in public school programs.

Nonetheless, where prior state regulation provided that preschoolers were children in need of special education if they have a substantial disability, it appears that this rule fell short of federal minimums. Accordingly, DOE's explanation that a change was necessary to comply with federal law is reasonable. However, inasmuch as the 1986 state amendment defines special needs preschoolers as having "any condition which would ... deter that child's ability to progress effectively ..." (emphasis added) it appears to exceed not only federal minimums, but possibly even the state criteria for older pupils.

DLM does not agree that the aim of achieving federal compliance required the definition of special education eligibility for three and four year olds adopted in the 1986 state amendment. To the extent the new state regulation exceeds federal minimums, the local mandate law applies.

- c) Finally, DOE suggests that since the determination that any individual is in need of special education is made by a school's evaluation team, the duty to provide service is more a result of local action than a result of state requirements. Certainly, local teams have some discretion in conducting their work, and professionals might disagree on the diagnosis of a particular individual. But the bottom line is that a team decision is grounded in a good faith effort to comply with state laws and regulations. Accordingly, DLM does not agree that identifying particular individuals as special needs is essentially a matter of local option.

CONCLUSION

The above discussion establishes that 603 CMR 28.103 is subject to the local mandate law in that it:

- a. took effect after January 1, 1981;
- b. results in mandated special education services for a new class of children beyond requirements of federal law; and
- c. is not a matter of local option.

DLM certifies that the commonwealth has not provided for the assumption of the resulting cost to the City of Worcester by general law and by specific appropriation.

2. Cost Imposed Upon City of Worcester.

To isolate the cost imposed by the regulation change it was necessary to identify the number of three and four year olds evaluated as special needs under the new state criteria who would not have been so evaluated if the less inclusive federal standards applied. To do this, Worcester had its Director of Special Education review each preschool placement since September, 1986 to determine those pupils who would not have been deemed in need of special education under either the federal or pre-1986 state standards. Among other factors, the director relied upon the nature of services provided as reflecting the level of disability. Students requiring one hour or less per week of service were identified among those who would not have been serviced if federal criteria were the rule. For school years 1987-1988, 1988-1989 and 1989-1990 costs of serving these pupils include: team evaluations, annual reviews and actual services provided.

Costs vary for each pupil, depending upon the types of professionals involved and the duration of weekly service. Detailed cost documentation is on file in the DLM office in the form of an affidavit of Worcester Public Schools Director of Special Education and other correspondence. Costs are certified in summary form as follows:

1987-1988 seventeen additional pupils served

cost of team evaluations	\$ 7,150.00
cost of annual reviews	2,280.00
cost of actual service	<u>12,420.00</u>
Total	\$21,850.00

1988-1989 twenty-two additional pupils served

cost of team evaluations	\$ 9,240.00
cost of annual reviews	3,360.00
cost of actual service	<u>17,280.00</u>
Total	\$29,880.00

1989-1990 (est.) thirty-four additional pupils

cost of team evaluations	\$13,000.00
cost of annual reviews	4,000.00
cost of actual service	23,220.00
Total	<u>\$40,300.00</u>

CUMULATIVE TOTAL COST \$92,030.00

C. MASSACHUSETTS DEPARTMENT OF EDUCATION (DOE) REGULATION 603 CMR 28.315.1
RELATIVE TO SCHOOL PRINCIPAL'S DUTY TO NOTIFY PARENTS OF THEIR RIGHT TO
REFER CERTAIN "AT RISK" CHILDREN FOR A SPECIAL NEEDS EVALUATION. COST
IMPOSED = \$114,104.89.

1. Applicability of G.L. c. 29, s. 27C.

The provisions of G.L. c. 29, s. 27C(c) apply to "[a]ny administrative rule or regulation taking effect on or after January [1,1981] which shall result in the imposition of additional costs upon any city or town" The amendment to 603 CMR 28.315.1 regarding notification of parents took effect in September of 1986. Clearly, the amended text is a "... regulation taking effect on or after January [1, 1981]"

Further, the amendment imposes additional costs upon the City of Worcester. Prior regulation required school principals to determine whether a pupil should be referred for a special education evaluation when certain factors existed. These factors are:

- o when a pupil fails two or more subjects;
- o when a child is excluded from school more than five days;
- o when a child is absent more than fifteen days without medical excuse;
- o when a child ages sixteen through twenty-one is about to drop out.

The 1986 amendment additionally requires principals to "... promptly and in writing notify the parents which condition exists, if a referral is being made, and of their right to make such referral." Compliance with this notification requirement includes administrative, clerical, postal and other miscellaneous expenses.

There is no evidence to indicate that this amendment was adopted as a result of a court decision or federal requirements. Further, the requirement is not subject to local acceptance. Accordingly, DLM concludes that the amendment is subject to the provisions of G.L. c. 29, s. 27C.

DLM certifies that the commonwealth has not provided for the assumption of the resulting cost to the City of Worcester by general law and by specific appropriation.

2. Cost Imposed Upon City of Worcester.

To isolate the cost impact of this regulation change, DLM carefully compared the prior text to the new and disallowed costs which would have occurred under the prior text. Before the 1986 amendment, significant administrative time was required to monitor the occurrence of the section 315 factors triggering a principal's duty to determine whether pupils should be referred for evaluation. Although this monitoring of student records is still required, this obligation was imposed before 1981; therefore associated costs are disallowed.

Similarly under prior text, when a principal determined that a referral for evaluation was appropriate, the principal was required to notify the pupil's parents in writing within five days. 603 CMR 28.317.0. Since this requirement predates the 1981 effective date prerequisite to a mandate finding, costs associated with any section 315 letters in which the principal is making a referral are disallowed.

Allowed costs are calculated by accounting for the time of administrators, guidance counselors/teachers and clerks required to prepare letters in cases where the principal is not recommending referral for evaluation. Costs are also allowed for time allocated for the parents' initial telephone inquiry and/or conference to discuss the meaning of the section 315 letter. No costs are allowed for subsequent parent initiated evaluations and any resulting services, as the parental right to refer and obtain service predates 1981.

Within these parameters, the City of Worcester suggested a calculated average cost per student requiring a section 315 letter based upon average personnel time necessary. As time allocated differs from the high school to middle school to elementary levels, and the types of personnel which share the time differs, DLM allows a different average per student cost for each. Allowed allocation of personnel time and average cost per student are as follows:

- o senior high : 23 minutes / \$10.52 per student
- o middle school: 22 minutes / \$ 9.45 per student
- o elementary : 44 minutes / \$23.68 per student

Accordingly, DLM certifies in summary form costs incurred by the City of Worcester to comply with the 1986 amendment to 603 CMR 28.315.1 as follows:

1986-1987 school year

senior high	:	767 students x 10.52 =	\$ 8,068.84
middle school:		379 students x 9.45 =	3,581.55
elementary	:	320 students x 23.68 =	7,577.60
SUBTOTAL	:		<u>\$19,227.99</u>
postage	:		366.50
TOTAL	:		<u>\$19,594.49</u>

1987-1988 school year

senior high	: 701 students x 10.52 =	\$ 7,374.52
middle school:	544 students x 9.45 =	5,140.80
elementary	: 604 students x 23.68 =	14,302.72
SUBTOTAL	:	\$26,818.04
postage	:	462.25
TOTAL	:	\$27,280.29

1988-1989 school year

senior high	: 1,029 students x 10.52 =	\$10,825.08
middle school:	737 students x 9.45 =	6,964.65
elementary	: 809 students x 23.68 =	19,157.12
SUBTOTAL	:	\$36,946.85
postage	:	643.75
TOTAL	:	\$37,590.60

1989-1990 school year(est.)

senior high	: 794 students x 10.52 =	\$ 8,352.88
middle school:	494 students x 9.45 =	4,668.30
elementary	: 681 students x 23.68 =	16,126.08
SUBTOTAL	:	\$29,147.26
postage	:	492.25
TOTAL	:	\$29,639.51

CUMULATIVE TOTAL COMPLIANCE COST \$114,104.89

Correspondence providing further details as to these costs is on file in the DLM office.

D. DEPARTMENT OF EDUCATION REGULATION 603 CMR 28.319.3(a) RELATIVE TO REQUIREMENT THAT SCHOOL NURSE REVIEW THE PHYSICIAN'S HEALTH ASSESSMENT COMPONENT OF SPECIAL NEEDS EVALUATIONS: COST IMPOSED = \$24,692.00

1. Applicability of G.L. c. 29, s. 27C.

The provisions of G.L. c. 29, s. 27C(c) apply to "[a]ny administrative rule or regulation taking effect on or after January [1, 1981] which shall result in the imposition of additional costs upon any city or town" The amendment to 603 CMR 28.319.3(a) regarding school nurses took effect in September of 1986. Clearly, the amended text is a "...regulation taking effect on or after January [1, 1981]...."

Further, the amendment imposes additional cost upon the City of Worcester. The new text requires that the physician's health assessment component of special needs evaluations "... shall be reviewed by the school nurse and any additional relevant health information shall be added from the child's school health records." 603 CMR 28.319.3(a). This change imposes new duties upon school nurses who must devote time to reviewing the assessments, cross-referencing existing school health records and adding relevant information.

There is no evidence to indicate that this amendment was adopted as a result of a court decision or federal requirement. Further, the amendment is not subject to local acceptance. Accordingly, DLM concludes that the regulation is subject to the provisions of G.L. c. 29, s. 27C.

DLM certifies that the commonwealth has not provided by general law and by specific appropriation for the assumption of the resulting costs to the City of Worcester.

2. Cost Imposed Upon City of Worcester.

By a February 27, 1990 affidavit, the Director of Nurses for the Worcester Department of Public Health provides the following data:

- a) Each review of a physician's health assessment requires approximately one-half hour of public nurse time.
- b) The average hourly wage of a public health nurse is \$12.30.
- c) Accordingly, the cost of complying with the amended regulation is \$6.15 per review.
- d) During school year 1986-1987 there were 861 evaluations.
- e) During school year 1987-1988 there were 1,191 evaluations.
- f) During school year 1988-1989 there were 1,235 evaluations.
- g) During school year 1989-1990 (through January 31, 1990) there were 728 evaluations.

Based upon these facts, DLM certifies the cost imposed by the 1986 amendment to 603 CMR 28.319.3(a) as follows:

<u>School Year</u>	<u>Cost Imposed</u>
1986-1987	\$ 5,295.00
1987-1988	7,325.00
1988-1989	7,595.00
1989-1990 (as of 1/31/90)	4,477.00
CUMULATIVE TOTAL	<u>\$24,692.00</u>

The affidavit of the Director of Nurses for the Worcester Department of Public Health attesting the above facts is on file in the DLM office.

E. MASSACHUSETTS BOARD OF REGENTS OF HIGHER EDUCATION COLLEGE ADMISSIONS STANDARDS REQUIRING STUDENTS TO COMPLETE TWO YEARS OF A FOREIGN LANGUAGE.
COST IMPOSED = \$486,574.00

1. Applicability of G.L. c. 29, s. 27C.

On January 10, 1984 the Massachusetts Board of Regents of Higher Education (BOR) published Minimum Admissions Standards For Public Baccalaureate Colleges and Universities. (Publication #13506-19-1000-1-84-CR.) These standards set minimum eligibility requirements for students seeking admission to public institutions of higher education on or after September, 1987. Among the various high school unit requirements, this standard for the first time provides that applicants must have completed two years of a single foreign language. Id. at p. 5. Exemptions from the standards are allowed for specified applicants: G.E.D. students, special needs students, educationally disadvantaged, and certain transferring students. In reaching the decision that this standard imposes costs upon the City of Worcester subject to the provisions of the local mandate law, DLM addressed several issues. These are discussed below.

a. Are the BOR admissions standards "regulations" taking effect on or after January 1, 1981 within the meaning of G.L. c. 29, s. 27C?

The local mandate law does not apply to every form of state action which may impact local spending; it applies only to laws, rules and regulations. Where the term "regulation" is not defined in G.L. c. 29, s. 27C, DLM adopts the definition provided by G.L. c. 30A, the State Administrative Procedure Act.

In relevant part, G.L. c. 30A, s. 1(5) provides that: "Regulation includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect ... adopted by an agency to implement or interpret the law enforced or administered by it"

The BOR admissions standards apply generally to all students (with stated exceptions), and will remain in effect until revised. This is clearly a standard of "general application and future effect." Further, the BOR circulated draft versions of the standards, held public commentary forums, and revised drafts based upon public comment. Through this action the BOR emulated the public hearing provisions of G.L. c. 30A, recognizing that the standards were of substantive public consequence. Finally, the standards were adopted to implement the aims of law administered by the BOR, G.L. c. 15A and its "Long Range Plan For Public Higher Education in Massachusetts" (developed pursuant to said c. 15A).

Based upon these facts, DLM concludes that the BOR admissions standards are "regulations" within the meaning of G.L. c. 30A and G.L. c. 29, s. 27C. Further, having been published in January 1984, they are regulations "...taking effect on or after January [1, 1981]...."

- b. Do the BOR admissions standards obligate the City of Worcester to include foreign language instruction in its public school curriculum?

Since the admissions standards regulations primarily speak to students seeking admission to public baccalaureate programs, DLM questioned whether the standards apply only to such students, and not to public high schools. After reviewing relevant law and regulations defining duties of municipalities and school committees, DLM concludes that to the extent the standards impose foreign language requirements upon students, the standards obligate public high schools to provide foreign language coursework.

Regarding the educational duties of municipalities, general law provides that:

Every town shall maintain, for at least the number of days required by the board of education in each school year unless specifically exempted as to any one year by said board, a sufficient number of schools for the instruction of all children who may legally attend a public school therein ... G.L. c. 71, s. 1. (Emphasis added.)

Clearly, municipalities must maintain schools "for the instruction" of children. The law is not so clear, however, as to what is necessary to satisfy the requirement to provide instruction. Nonetheless, there are directives dispersed through the general laws which provide some clarification:

- o G. L. c. 71A, s. 2 requires school committees to provide bilingual education when twenty or more pupils of limited English-speaking ability reside in the school district.
- o G.L. c. 71B, s. 3 requires school committees to provide or arrange for the provision of special education programs.
- o G.L. c. 74, s. 8 requires towns to pay tuition for their residents admitted to vocational programs in other towns when the town where the pupil resides does not provide the type of education desired.

Accordingly, municipalities must provide or arrange for instruction encompassing bilingual education, special education and vocational education. Each of these forms of education is defined by statutes cited above.

Nowhere in general law is there an explicit directive that municipalities must provide what is known as "regular education," although this is a form of education referenced in relevant law. G.L. c. 70, regarding school funds and state aid, is replete with references to "regular education", and defines a regular day program as "...any public school day program not

defined as special needs, vocational or ... bilingual" G.L. c. 70, s. 2. G.L. c. 71B, regarding special education, is likewise replete with references to regular education, and defines it as "... the school program and pupil assignment which normally leads to college preparatory or technical education or to a career...." G.L. c. 71B, s. 1. The notion of "regular education" is so widespread, that it follows that where municipalities must provide bilingual vocational and special education, the term "instruction" in G.L. c. 71, s. 1 must include regular education.

To determine what action is necessary to satisfy the requirement that school committees provide regular education, DLM relies upon the definition provided by G.L. c. 71B, s. 1 in that it is more descriptive than the G.L. c. 70 definition. Again, c. 71B provides that regular education is a program "...which normally leads to college preparatory or technical education or to a career" It is the BOR which sets the baseline definition of college preparatory education through its minimum admissions standards. Where said standards require two years of foreign language among the high school unit requirements, school districts must provide foreign language classes to satisfy the duty to provide regular education.

c. Is there a procedure whereby school districts may be exempted from providing foreign language courses?

This question arose upon review of a January 17, 1986 memorandum from the BOR vice chancellor of academic and student affairs to all Massachusetts school superintendents regarding the admissions standards. Page 1, paragraph 2 states:

First of all, I would remind you of the necessity of requesting a waiver from the Board of Regents if schools in your district are not able to offer one or another of the sixteen units when they take full effect for students entering public baccalaureate colleges in the Fall of 1987.

This communication would indicate that school districts would not be obligated to provide foreign language courses if granted a BOR waiver.

Information received by the City of Worcester from a public records request to the BOR and subsequent discussions, however, show that the waiver opportunity was ineffective. At any rate, any waiver granted would have been temporary with the expectation that the school district would implement plans to reach compliance with the high school academic unit requirements.

The fact that there is no mechanism for permanent waiver or exemption from foreign language academic units further demonstrates that school districts are obligated to provide this instruction.

CONCLUSION

There is no evidence to indicate that the foreign language requirement was adopted as a result of a court decision or federal requirements. Further, this is not a matter of local acceptance. Accordingly, DLM concludes that the BOR college admissions standards requiring two years of foreign language instruction are subject to the provisions of G.L. c. 29, s. 27C.

DLM certifies that the commonwealth has not provided by general law and by specific appropriation for the assumption of the resulting costs to the City of Worcester.

2. Cost Imposed Upon City of Worcester

Since the foreign language units were required for September, 1987 admission, school districts had to offer this coursework beginning September, 1985. During the four years preceeding this requirement, 35% of Worcester high school pupils took foreign language. To isolate the impact of the BOR standards, DLM allows only the costs of providing foreign language classes to the number of pupils exceeding the historical rate. Annual compliance costs were calculated by determining the number of additional foreign language teachers necessary to serve the increased pupil population. Where the average foreign language class pupil/teacher ratio is 20:1, and one teacher can teach 5 classes, the total pupil/teacher ratio used is 100:1. The average foreign language teacher salary is \$30,000. Based upon these facts the cost of additional teachers is determined as follows:

School year 1985-1986

There were 4,669 high school pupils. 1,926 took foreign language classes. Discounting the historical 35%, there were 292 additional pupils. This required 3 additional teachers for a cost of \$90,000.00

School year 1986-1987

There were 4,703 high school pupils. 1,953 took foreign language classes. Discounting the historical 35%, there were 307 additional pupils. This required 3 additional teachers for a cost of \$90,000.00

School year 1987-1988

There were 4,647 high school pupils. 1,972 took foreign language. Discounting the historical 35%, there were 346 additional pupils. This required 3.5 additional teachers at a cost of \$105,000.00

School year 1988-1989

There were 4,555 high school pupils. 1,934 took foreign language. Discounting the historical 35%, there were 340 additional pupils. This required 3.5 additional teachers at a cost of \$105,000.00

School year 1989-1990

There are 4,408 high school pupils. 1,853 take foreign language. Discounting the historical 35%, there are 310 additional pupils. This requires 3 additional teachers at a cost of \$90,000.00

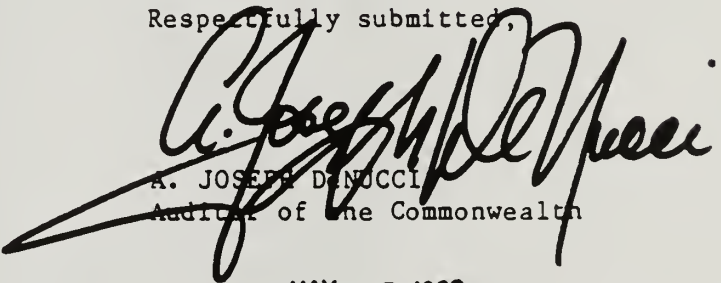
Cumulative total cost of additional teachers \$480,000.00

DLM also allows the cost of foreign language textbooks and an allocation of maintenance costs of language laboratories at \$19.00 per pupil. Based upon the largest number of additional pupils occurring in 1987-1988, 346 pupils x \$19.00 yields an additional cost of \$6,574.00.

Accordingly, TOTAL COMPLIANCE COSTS ARE CERTIFIED AT \$486,574.00

An affidavit of the Worcester Public Schools Deputy Superintendent for Educational Research and Development attesting to the above facts is on file in the DLM office.

Respectfully submitted,



A. JOSEPH DINUCCI
Auditor of the Commonwealth

Date: MAY 9 1990

